The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hirt Telecom Co.

File: B-231534

Date: June 7, 1988

DIGEST

The failure to furnish a bid guarantee required in the
invitation renders the bid nonresponsive.

DECISION

Hirt Telecom Co., the low bidder, protests the rejection of
its bid of $24,987 as nonresponsive for failure to submit a
bid guarantee under invitation for bids (IFB) No. 88-13,
issued by the Federal Communications Commission (FCC) for
cable installation.

We dismiss the protest.

The IFB clearly required a bid guarantee. Hirt argues that
its bid nevertheless was responsive by referring to the
Miller Act, 40 U.S.C. § 270a (1982), as implemented by
Federal Acquisition Regulation (FAR) § 28.102-1 (FAC 84-32),
which requires that performance and payment bonds be posted
for construction contracts that exceed $25,000. Under FAR
§ 28.101-1(a), a bid bond may be required only when payment
and/or performance bonds are mandated. The protester
maintains that since its bid is below the threshold amount
it therefore did not have to supply a bid guarantee.

There is no legal merit to the protest. Bid guarantees are
requirements promulgated under the procurement regulations,
and are not mandated by statute. Therefore, the contracting
activity does not derive its authority to require them from
the Miller Act. This being true, an agency may condition
bid acceptance, for contracts of less than $25,000, upon the
furnishing of a bid bond by the time of bid opening, and the
protester's failure to furnish the bond here thus properly
caused the rejection of the bid as nonresponsive. LTT
Constructors, Inc., B-229062, Nov. 13, 1987, 87-2 ¶ 484. We

further point out that the Miller Act itself, while providing a dollar threshold when the use of performance and payment bonds is mandatory, does not preclude requiring them for contracts below the statutory limit. Id.

The protest is dismissed.

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